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By ECF

Hon. LaShann DeArcy Hall
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Re: *Islam v. Cuomo [Hochul]*, E.D.N.Y. No. 20 Civ. 2328 (LDH) (CLP)

Dear Judge DeArcy Hall:

This Office represents the defendants in the above-referenced action. We respectfully submit this unopposed letter-motion to amend the caption to reflect the fact that as a matter of law, Governor Kathy Hochul has been substituted for former Governor Andrew Cuomo as a named defendant. Plaintiffs do not oppose this application.

Background

This action was brought on behalf of four app-based for-hire-vehicle ("FHV") drivers and the New York Taxi Workers Association ("Plaintiffs"). The Complaint, filed on May 25, 2020 (ECF No. 1), named Governor Cuomo, the New York State Department of Labor ("DOL"), and DOL Commissioner Roberta Reardon as defendants. Governor Cuomo was sued solely in his official capacity. *See* Compl. at p. 1 (Caption); *id.* ¶ 13; *id.* ¶¶ 1-5 (summarizing Plaintiffs' litigation goals as matters of public policy). *See also* ECF No. 71-1, at pp. 23-25.

Plaintiffs assert two claims under 42 U.S.C. § 1983, alleging that delays in processing drivers' claims for unemployment benefits during the pandemic violated the "when due" clause of the Social Security Act of 1935 and the Equal Protection Clause of the Fourteenth Amendment. Compl. ¶¶ 180-195. The Complaint seeks declaratory and injunctive relief, but does not seek money damages. *Id.* at pp. 36-37.

Governor Cuomo resigned effective August 24, 2021, whereupon Lt. Governor Hochul succeeded him as governor. The Court may take judicial notice of these facts. *See, e.g., Heidel v. Hochul*, No. 20 Civ. 10462 (PKC), 2021 WL 4942823, at *1, n.1 (S.D.N.Y. Oct. 21, 2021).

Governor Hochul Was Substituted For Governor Cuomo Automatically

Federal Rule of Civil Procedure 25(d) provides that “when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending,” his or her “successor is automatically substituted as a party.” Here, the Complaint asserted claims against Governor Cuomo in his official capacity, and he resigned effective August 24, 2021. As such, Governor Hochul “is automatically substituted as a party,” and proceedings in this case should now be in her name. Fed. R. Civ. P. 25(d).

At least three recent cases have recognized the automatic substitution of Governor Hochul for Governor Cuomo under Rule 25(d). *See Heidel*, 2021 WL 4942823, at *1, n.1; *Geller v. Hochul*, No. 20 Civ. 4653 (ER), 2021 WL 4392521, at *1 (S.D.N.Y. Sept. 24, 2021); *Smith v. Hochul*, No. 521 Civ. 35 (LEK) (ATB), 2021 WL 4972640, at *2 (N.D.N.Y. Oct. 26, 2021). Courts enforced the same rule to substitute Governors David Paterson and Eliot Spitzer for their predecessors. *See, e.g., McLaurin v. Paterson*, No. 07 Civ 3482 (PAC) (FM), 2008 WL 3402304, at *10 (S.D.N.Y. Aug. 11, 2008); *Mental Hygiene Legal Servs. v. Paterson*, No. 07 Civ. 2935 (GEL), 2008 WL 3992292, at *1, n.1 (S.D.N.Y. Aug. 28, 2008); *Duffy v. Spitzer*, No. 06 Civ. 6763 (SJF) (LB), 2007 WL 2874823, at *1 (E.D.N.Y. Sept. 26, 2007).

As such, Defendants respectfully request that the Court issue an order recognizing the substitution of Governor Hochul in her official capacity for former Governor Cuomo as a named defendant in this action, and direct the Clerk to amend the caption accordingly. Such a ruling will not affect the merits of Defendants’ pending motion to dismiss the action against the incumbent Governor, which is premised on the Governor’s official status. *See* ECF No. 71-1, at pp. 23-25.

We appreciate Your Honor’s continued attention to this matter.

Respectfully,

/s/ *Michael A. Berg*

Michael A. Berg
Assistant Attorney General

cc: All Counsel of Record